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Illicit deals in cultural objects as crimes of the powerful

ABSTRACT

Research with dealers at the market end of the global chain of supply of cultural objects leads to the suggestion that the analytical framework associated with the concept of 'crimes of the powerful' can be useful in helping us to understand the role of dealers in driving the market, and in focussing our attention on the difficulties of engaging with the illicit trade through a conventional criminal justice approach. This paper explores the nature of the power that is associated with high-level antiquities dealers, and considers its regulatory implications.

Key words: looted antiquities, power, illicit market, neutralisation, regulation, risk

Introduction: Antiquities, power and regulation

Antiquities dealers are at the centre of the illicit international trade in cultural property. They provide a source of demand for cultural objects, and the financial implications of this demand drive the market (Chappell and Polk 2009). Previous studies of this international illicit market have shown dealers to be active participants in transactions in looted objects (Mackenzie 2005b; Kersel 2006). They buy and sell cultural objects which often have little or no provenance (information on the object's history of ownership) and in the case of antiquities lack provenience (information on the object's findspot and circumstances of excavation).[1]

The recent history of academic study of the illicit market in cultural objects has been predominantly the preserve of the disciplines of archaeology, anthropology and law. Early writing by archaeologists and art historians brought the issue of antiquities looting to public

[1] The term 'cultural objects' is used in this paper to refer to a broad category of items including archaeologically important artefacts as well as objects with a contemporary religious or other cultural value. Other terms sometimes used for this class of objects include 'cultural property' and 'cultural heritage'. More precise definitions of this class of objects, or sections of it, are available in documents such as the UNESCO and UNIDROIT conventions mentioned later in this paper, and specific domestic laws contain their own specifications – for example often only affording protection to 'antiquities' if they qualify as being over 100 years old. The discussion in this paper focuses around the problem of looting in relation to such antiquities; old, archaeologically significant items buried in the ground or attached to a larger heritage structure. However, many of the issues discussed also apply to illicit markets in cultural objects more widely conceived, as indicated by the use of that term where relevant.

and official attention. Often these contributions were written by archaeologists who had experienced the destruction caused by site looting in the course of their own studies and excavations. Articles published were activist in their orientation, seeking both to bring the issue of looting to the fore, and then to constitute explicit links between local instances of looting and the observable market practices of trading and collecting in consumer countries (Coggins 1969, 1970, 1971). Perhaps the best known aphorism which developed to encapsulate the 'archaeological activist' position is that 'collectors are the real looters' (Renfrew 1993). Although I refer to these here as the 'archaeological' contribution to the debate, the authors referenced in fact include art-interested journalists, art historians and humanities scholars as well as a core of actively writing archaeologists. 'Archaeological' contributions have developed from the early consciousness-raising interventions to include statistical analyses of collections and auction catalogues (Gill and Chippindale 1993; Chippindale and Gill 2000), ethnographic studies of local looting (Roosevelt and Luke 2006; Ruiz 2001; Atwood 2004), activist research centres (especially the erstwhile IARC based at Cambridge University), and more recently market-oriented analyses (Kersel 2006).

Meanwhile, anthropologists were emphasising the cultural and economic harm caused to source countries when cultural objects are removed for collection in market countries and recategorised as 'art', a move that reproduces and reinforces on a cultural register the hierarchies and inequalities of the political and economic world order (Clifford 1988; Price 2002; Steiner 1994; Errington 1998). This line of argument was ultimately taken up by archaeologists (Gill and Chippindale 1993). Anthropologists have also drawn attention to the sometimes poor socio-economic circumstances of the people actually carrying out the looting and theft, and the disadvantaged position they occupy at the bottom of the global trading chain (Matsuda 1998; Hollowell 2006).

Alongside the archaeological and anthropological contributions, many of the landmark contributions to the study of the illicit antiquities trade have been made by lawyers, such as Paul Bator (1982, 1983), Patty Gerstenblith (e.g. 1995, 2006, 2007), David Murphy (1995), John Henry Merryman (e.g. 1986, 1988, 2000), and Norman Palmer (Palmer 1994; Palmer et al. 2000). The moral argument laid out by archaeological commentators has become the object of much legal writing, and drafting, and the policy landscape at both the national level – in source and market countries – and the international level, is now characterised by many legal controls including notable international conventions (UNESCO 1970; UNIDROIT 1995), national generic criminal laws that have been applied to illicit dealing in antiquities (such as the National Stolen Property Act in the US) and criminal laws specific to dealing in looted antiquities such as the Dealing in Cultural Objects (Offences) Act 2003 in the UK. There are also of course a range of other civil and administrative provisions which are capable of affecting the trade, such as laws in source countries that vest title to undiscovered antiquities in the state, customs regulations which govern export and import, and so on (Prott and O'Keefe 1984, 1989).

Finally, the contribution of indigenous communities should not be overlooked. Since the 1970s, increasing indigenous activism aimed at securing sovereign rights has highlighted how destruction or depletion of tangible cultural heritage is an active or passive strategy of cultural and political assimilation. Thus indigenous self-determination rests in part on the possession and protection of cultural objects. The legislative outcome of this indigenous activism is apparent in national legislation such as the 1990 Native American Graves Protection and Repatriation Act in the US and international instruments such as the 2007 UN Declaration on the Rights of Indigenous peoples. It has also begun to influence legal studies (e.g. Vrdoljak 2006).

In terms of the content and effect of these archaeological, anthropological, legal and indigenous writings, it may be appropriate to think of them as the first two phases of engagement with the trade, progressing from early awareness-raising to the later development of attempts at systems of control and management of looting and trading activities. The timelines of these 'phases' are overlapping, since awareness-raising interventions continue to appear in scholarly journals, and many source countries had developed laws to protect their cultural heritage long before the serious consciousness-raising writings of the 1960s and 70s emerged. But the movement from 'moral knowledge' to 'law' does seem to characterise the broad transition we have seen since the middle of the last century.

Lately the development of the legal governance of the trade has been the subject of discussions at the international level once again, being the subject of a UN-sponsored stakeholder conference in Courmayeur, Italy in December 2008 (Manacorda 2009), an intergovernmental expert group meeting at the UN in Vienna in November 2009, one of the special topics discussed in ancillary sessions at the quinquennial UN crime congress in Brazil in April 2010, and then the main agenda item of the 19th session of the annual UN crime commission in Vienna in May 2010 (Mackenzie 2009b). A key element driving these discussions has been the ongoing development of the scope of application of the UN Convention on Transnational Organised Crime (UNTOC). When UNTOC was being developed, the illicit antiquities market was one of several examples of 'transnational organised crime' that informed the discussion and was seen to support the need for such a treaty. Influenced by UNTOC, the illicit antiquities market is now discussed at UN level under the auspices of 'trafficking in cultural property', a moniker which tends to play up its similarities to other (by implication comparable) transnational criminal market activities. This relatively new 'transnational crime' interpretation of the trade is an important development for many reasons, not least in the ongoing development of discussion about the applicability

and usefulness of UNTOC's cooperation provisions for mutual cross-border support in investigations and prosecutions involving looted antiquities, and its harmonizing influences on approaches to money laundering prosecutions and proceeds of crime seizures, which are developing into valuable legal tools where the handling of antiquities in one country is seen as dealing in the proceeds of a predicate offence of theft in another (Bowman 2008; Chappell and Polk 2009; UN Commission on Crime Prevention and Criminal Justice 2009). Accepting the clear value of applying in so far as possible to this type of illicit activity the legal and practical tools and injunctions developed in the international policy forum supporting UNTOC, the inevitable corollary of framing the issue as a problem of transnational organized crime (aside from empirical questions around whether, and to what extent, organised crime is part of the trade, on which see Proulx 2010; Mackenzie 2009a) is a continued focus on *criminalisation* as the appropriate overriding response to wrongful illicit looting and dealing. While it may be hard to define a coherent intellectual framework associated with the analysis of 'transnational organised crime', the policy effect of the application of this terminology in political decision making processes is to frame the problem in such a way that criminalisation and policing become the default categories of thought, and the presumptive systems requiring to be made more efficient.

In a context in which there are untapped possibilities in terms of approaches to crime prevention or reduction, and in which conventional legal, policing and criminal justice responses have had difficulty in achieving significant illicit market reduction effects, I will argue that this is a field in need of *regulation*, in the sense the term has been developed as a particular theoretical concept by scholars such as those associated with John Braithwaite's Regnet group at ANU. This is a market in which the key issues have been identified (by the archaeologists et al., in my very broad-brush history of academic engagement with the subject), and in which criminalisation and other legal strategies have been widely

implemented (by the lawyers, in my rough terms) but which lacks the holistic and lateral-thinking approaches that characterise the leading edge of contemporary tools of market governance (the preserve of the third group we need to encourage into the discourse – the regulators).

Overall, the aim of this contribution is to explore the value in developing a 'third phase' of analysis of crimes in this market by considering some activities in the market as 'crimes of the powerful'. That terminology draws attention to Frank Pearce's seminal book (1976), and I use it here in its sense as a contemporary byword for an 'upward gaze' in criminology, encompassing research on white-collar crime by individuals and groups, corporate crime, and state and state-corporate crime. The transaction crimes of dealers in illicit cultural objects seem to fit very well with observations of the criminological treatment of crimes of the powerful:

> Criminology plays a key role in the construction of crimes of the powerful as a kind of curio, a subject matter that is vaguely interesting but odd… Criminology's gaze is overwhelmingly directed downwards at the relatively powerless, an enterprise that it shares with most criminal justice agencies. It is the downward gaze of criminology, then, that reinforces the idea that the real problems of society can be located in the lower stratum, the poor working class and 'underclass'… (Whyte 2009: 1)

The literature in the field of the crimes of the powerful has tended to implement this upward gaze by incorporating a heightened awareness of political economy within criminology. Broadly therefore, the analytical orientation I take to be provided by a study of the crimes of the powerful considers the international dimensions of crimes such as trafficking antiquities as part of the world capitalist system, which therefore also implicates in the analytical frame the class system and the neo-liberal capitalist state. The general issues at stake are 'how the capitalist state legislates and regulates – and how it controls and what it fails to control in terms of its relation to the capitalist mode of production' (Quinney 1978: 83). More specifically, among the many theoretical tools and orientations offered by the research

literature in the field of crimes of the powerful, I wish to select three perspectives which seem to me to be both particularly worth considering as lenses through which to see the problem of illicit deals in cultural objects, and mutually compatible. These frameworks are (a) power; (b) neutralisation; and (c) regulation. In combining these three concepts, we can begin to understand and remedy the failure of current legal strategies to seriously change the character of the antiquities trade, as we see how dealers have power to navigate the legal obstacles they have been presented with, and may be more usefully controlled by a regulatory approach to the trade as opposed to a narrowly legalistic one.

The power of the dealers

In 2008, Penny Green and I laid out a socio-historical review of the history of the UK's Dealing in Cultural Objects (Offences) Act 2003. We did so under the title of 'a case study of how powerful people avoid criminal labels' (Mackenzie and Green 2008). With its focus on the mechanics of the UK dealers' neutralisation of the effects of the criminalisation process, that paper tended to sacrifice for reasons of space an exploration of the nature of the power that the dealers possess, command, harness, or otherwise benefit from. This is what I try to outline here.

Why is an understanding of the particular nature of the power associated with antiquities dealers important? In *Going, Going, Gone* (Mackenzie 2005b), I argued that in order to design an efficient regulatory structure for the antiquities market, 'regulators' needed first to understand in significant ethnographic detail the routines and thought-structures of those operating in the market; and for me at the time of that research the most obvious lacuna in the literature was a cataloguing and analysis of the sociological and psychological routines, habits and practices of the constituency of high-end dealers. These were a relatively obscure and hard-to-reach secretive cohort of very affluent people who seemed to couple a public visibility (through their shops on Madison Avenue and Old Bond Street, for example) with

the veil that makes the inner worlds of their deals off-limits for inspection for reasons of customer confidentiality, inter-dealer competition, and an apparent general preference for privacy over openness. A deep understanding of the way a market works is an essential precursor to effective regulation, but it is not enough. Having seen the 2003 Act implemented at the time I was conducting that study, having gone on to investigate its effects during a study in 2005-07 (Mackenzie and Green 2009a), and having researched the role the dealers' lobby played in the negotiation of the terms of that legislation (Mackenzie and Green 2008), it has become very apparent that without a grounded understanding of the power capacities of that lobby, the idea that the democratic political process will somehow turn a solid understanding of 'what is to be regulated' into a programme of good governance for the market is unrealistic. In order to produce good regulation we need to have a grounded understanding of the routines of the actors making up the 'regulatory space' (Hancher and Moran 1989), so that appropriate 'regulatory logics' can be operated to control activity in that space (Burris 2008), but we need to supplement this ideal construction of the regulatory scheme with the real-world observation that in order to design and implement any regulatory endeavour that seeks to have more than just performative effect, we must understand the nature of power at work in the field, and where this operates to the benefit of the actors to be regulated, neutralise it or at least engage with it in a conscious way.

London is a significant international centre for antiquities trading. As an example of an international dealing community, London's antiquities dealers are not powerful in any straightforward or obvious sense. First, they are not many in number. Precise numbers are not available due to the absence of formal professional registration requirements, but as at 2001/02 the Antiquities Dealers Association, an international body 'formed in May 1982 in order to include as many dealers and collectors of antiquities as possible throughout the world' had only 23 Dealer Members in the UK and 25 Associate Collector Members (ADA

2001). In 2008, the UK Government's Department for Culture, Media and Sport estimated that there were 'around 20 large dealers in the UK dealing in antiquities and a further 100 or so smaller dealers who deal, to some degree, in antiquities' (personal communication). Second, their trade is not vital, or even in any way central, to the UK economy. Although in 1999 the total UK art market was estimated at £4.5 billion, antiquities were thought to make up a small proportion of that amount, with the UK's licit market in classical antiquities estimated at £15 million, and in oriental and South Asian items (including all items, not just excavated material) estimated at £40 million (Palmer et al. 2000: 41). Third, they are not corporate, which means both that they lack the traits of the postmodern sales behemoth – logos, branding, public advertising, call centres - all of which might be summarised as 'visibility'; and that they do not cradle the vested interests of private and institutional shareholders, which would link them to the broader national economic interest through pensions and investments. Fourth, they do not employ large numbers of workers – it is unusual in fact for a dealer to employ anyone beyond a secretary, and only the more successful dealers have these. Fifth, they are not multinational, again in the corporate sense, which might involve the drawing of 'world-class' expertise in whatever field from other outposts into the UK. And finally, they peddle a trade in obscure objects, not of general fascination but interesting only to a very select group of wealthy collectors and public museums, neither of which at first blush might seem to form a considerable political constituency. Are they powerful, then, and if so how? What, indeed, is power in this context?

From Lukes (2005) we can draw the initial suggestion that a rounded conception of power requires to go beyond the 'two-dimensional' view of power as influence exerted in the course of observable social or value conflicts, either overt or covert. In its third-dimensional form, Lukes claims A can exercise power over B by influencing, shaping or determining his wants or preferences, thus 'preventing grievances – by shaping perceptions, cognitions and

preferences in such a way as to secure the acceptance of the status quo, since no alternative appears to exist, or because it is seen as natural or unchangeable, or indeed beneficial' (Lorenzi 2006: 91). So powerful people or groups can (i) win out in an observable conflict of subjective interests – the 'overt' conflict type, or 'first dimension' of power, (ii) limit decision-making to relatively non-controversial issues, and create or reinforce barriers to the public airing of policy conflicts (Bachrach and Baratz 1970: 8) – the 'second dimension', or (iii) be attributed with some amount of responsibility for the acquisition of beliefs by others that result in their consent or adaptation to a situation or practice which is detrimental or contrary to their interests and to the benefit of the powerful – the 'third dimension'. As explained further below, it seems that the second and third dimensions of power that involve public and policy (mis)perceptions of the sometimes crass and criminal transaction routines of the market in cultural objects, seem especially useful to an analysis of power in the trading world of cultural objects. The first type of blunt influence seems to emerge by way of more direct political and legal modes of representation of market interests when the effects of the second and third dimensional power capacities of the trade begin to wane.

From the list of the criminological offerings on the topic to date (including Bowman 2008; Polk 2000, 2002; Alder and Polk 2002; Conklin 1994; Mackenzie 2002a, 2002b, 2005b, 2005a, 2006, 2007; Mackenzie and Green 2008, 2009b; Tijhuis 2006; Chappell and Polk 2009), and excepting our 2008 paper, only David Wilson has directly addressed the matter of antiquities dealers as 'powerful', and then only in very brief passing (Wilson 2000: 5-6). Wilson suggests that antiquities dealers constitute a 'powerful elite' and that we can

> *see aspects of that power in the culture which surrounds their business. For example they choose to advertise a variety of impressive sounding academic and professional qualifications and, in common with most powerful élites, they are remarkably secretive.*

Drawing a parallel with the legal/illegal debate surrounding cannabis and alcohol, Wilson suggests that

> *what is of interest is how powerful lobbies maintain an actual campaign to ensure that drinking is seen as culturally desirable, and how the government colludes in this process by raising revenue from the sale of alcohol.*

This should draw our attention, he thinks, to the social context in which issues are played out; and antiquities dealers benefit from the social perception of their trade as different in kind from

> *the legitimate business of selling second-hand motors [which] is culturally seen as 'dodgy' and suspect, and is perceived to be dominated by 'Del-boys'.*

This seems a good place to start then – the antiquities trade is generally perceived to be both a classy way to earn a living, and to be a field of activity that is culturally desirable in the sense that its disappearance would detract in some way from the UK's cultural scene, which includes art and art history. The antiquities trade makes purposive efforts in impression-management (cf. Goffman 1959) but dealers also benefit from the fact that their enterprise is situated in the wider socio-cultural field which includes and reproduces such matters as art, aesthetics and taste, and in which museums play a leading role. Museums have a special, and central, place in the cultural field. In western countries they are in many ways the antithesis to the blunt, crass swathe cut by the corporate world, but notably they practice a similar code – accumulation in a competitive marketplace – while being attributed and presenting an image of public service, educative value, cultural preservation, intellectual stimulation and genteel whimsy. Although their acquisitions and holdings have come under increasing scrutiny as the debate over looting and repatriation has escalated, the overall assumed value to the cultural field of museum collecting and display still lends the cultural objects market some measure of innocence by association.

The deference paid to the cultural field in general, and the cultural objects trade in particular, is indicative of a symbolic power that plays a central part in the dynamic inherent

in Bourdieu's polysemic concept of 'distinction' (Bourdieu 1984). One is 'of distinction' when one can appreciate such high brow matters as art and antiquities, or seem to, and distinction in this sense provides a mechanism of differentiation – 'distinction' in the second sense – maintaining social boundaries between the affluent aesthete and the ignorant proletarian who, not having been exposed to the socialisation mechanisms necessary to internalise the normative appreciation of high art is cast as revealing his 'natural' predisposition to vulgarity, stupidity and worthlessness. On this view then, taste is an acquired form of cultural competence which functions as a method of 'classifying the classifier' and serves to legitimate class hierarchies through cultural symbolism.

The active task of the cultural objects dealer in this regard is to sustain the popularly held image of the routines of their industry as high culture rather than, for example, crime. This is made easier by the relatively obscure nature of the problem in terms of its low level of visibility in public debate on matters of national importance, and the consequent low level of political return presently for energetic regulation of antiquities dealing. Apart from a small and relatively localised cohort of archaeologists, the issue of looted antiquities has not fired the public imagination in the demand nations and accordingly there is little political value there in allocating resources to strategies of criminalisation. Public apathy in this case creates power in the trade by rendering it less visible on the political regulatory landscape.

The high-end dealers tend to be well-educated and are, in their public correspondence at least, eloquent, persuasive and emotional in their pleas for their trade to be considered as essential to the preservation of the world's cultural heritage (e.g. Ede 1998; Marks 1998) – in other words, they are well-equipped for impression-management. Impression-management will be at its most powerful when its mechanisms are least perceived (Lukes 2005; Zerubavel 2006); when there is no reason for the observer to question the impression given, which is then accepted as a fair reflection of the true state of affairs. As with other powerful actors,

contemporary processes of negotiation of image in the market for cultural objects often occur against a background of implied defamation litigation which operates to suppress critical expressions before they receive wide airing.

Antiquities dealers are well represented in law. Their wealth and capacity to mobilise extends their social capital into the realm of legal and political capital. The ordinarily loose ties of the relatively individualistic culture of dealing can at crisis points become firmer, producing interest-group representatives and lobbying power. In New York in particular, another major world city for cultural object trading, politically and legally well-connected lobby groups have existed to minimise or dismantle attempts to constrain dealings in imported artefacts. Such groups have attempted to engage public and political support in opposition to the writing of archaeologists, lawyers and other academics who for the most part show concern for the illicit opportunities the trade currently presents and express scepticism in respect of attempts by trade organisations to argue for minimal or self regulation in light of the many cases where looted objects have turned up in the 'licit' market (e.g. Watson 1997; O'Keefe 1997; Mackenzie 2005b: 14-17).

Dealers in cultural objects are therefore active in deliberately framing the debate in a way that leads to consideration of certain issues rather than others, such as object preservation and neo-liberal 'freedoms' to engage with private property rather than global cultural harm, outdated imperialist attitudes, and the unglamorous dirty business of handling stolen goods. This activity takes place within a context of public and official cognition which is already sympathetic to the art and antiquities trade, and it benefits the traders through a regulatory reluctance on the part of government and a general lack of excitement or outrage on the part of the public. In this regard, Lukes cites James Scott as

> suggest[ing] that 'the impact of power is most readily observed in acts of deference, subordination and ingratiation' and comment[ing] that power means 'not *having* to act

> or, more precisely, the capacity to be more negligent and casual about any single performance' (Lukes 2005: 78; citing Scott 1990: 28-9).

Casual negligence is a fair representation of the mindset of antiquities dealers when screening (or not) their purchases. As has been the subject of much criticism, dealers employ cursory, vague and superficial measures, if any, to weed out illicit objects from the chain of supply. Their ability to rely only on such inadequate protections against dealing in looted artefacts has until recently rested in the respectful deference granted to their cultural pursuits, historically entrenched over time as routine and thereby normalised ('privacy' as it is often euphemistically termed in the literature, or more critically 'secrecy' (Renfrew 1999)).

We can identify fluctuations in the value to dealers of the types of capital mentioned. As the moral and legal debate surrounding the antiquities market becomes more heated, the systemic power of the antiquities trade shifts in focus from its place in the status constructions of cultural distinction – a depletion, we might say, in the value of the symbolic capital of the market – to the mobilisation of the various other forms of capital mentioned (financial, social, legal, political) which bring the power to make influential representations in the regulatory debate to fend off or dilute any proposed intrusion when the light of law enforcement sweeps across transactions, revealing shady corners. Dealers operationalise these forms of power, most notably by entering and further politicising the legislative process and reducing the impact of control legislation by taking part in negotiations about its form and function (Mackenzie and Green 2008). A review of the 'crimes of the powerful' literature reveals that such influence is not unusual, having been noted in case studies of the regulation of various harmful industries over time such as automobile safety debates, asbestos control, and worker health and safety protections (Lee 1998; Calhoun and Hiller 1988; Tombs and Whyte 2007). Organisational studies show that rather than being interpreted as evil intent, the resistance to the moral imperatives underlying the drive to regulation can often be discerned

as connected to a neutralising discourse which provides a raft of rationalisations, justifications, excuses and world-views that are key qualities of the culture of doing business in many fields (Passas and Goodwin 2004; Passas 2005) – and this is also true of the antiquities trade, as I will now discuss.

Illicit antiquities deals, neutralisations, and 'crimes of the powerful'

It may seem odd to suggest that one of the conceptual angles offered up by a framework of crimes of the powerful is neutralisation theory, given that the idea of techniques of neutralisation is more famous in its application to delinquency. As early as 1953, however:

> Donald Cressey, in his classic work on embezzlers, *Other People's Money* (1953), assigned central importance to rationalizations in explaining the conduct of white-collar offenders. Cressey found that embezzlers were often individuals in positions of trust who, when confronted with a financial problem, embezzled money while rationalizing that they were only 'borrowing' it (Friedrichs 2010: 237).

Cressey was building on Sutherland's (1947) differential association concept of definitions favourable to violations of law, and while also taking off in the field of delinquency studies based on Sykes and Matza's more specific delineation of the content of these definitions (1957), techniques of neutralisation have since become a core analytical tool for researchers studying crimes of powerful people such as corporate officials (Box 1983), convicted antitrust offenders, tax violators and fraudsters (Benson 1985), sellers of unsafe drugs (Piquero et al. 2005), political offenders (Cavender et al. 1993), doctors defrauding medical payment schemes (Jesilow et al. 1993), and so on. The analysis of neutralisations by the powerful is likely to be linked to, but capable of being differentiated from, delinquent neutralisations, as 'accounting for involvement in white-collar crime is intimately involved with the social organisation of the offence [and] the accounts developed by white-collar offenders are delimited by the type of offence committed, its mechanics and its organisational

context' (Benson 1985: 585), so the aspects of power identified above as part of the 'organisational context' within which illicit cultural property deals take place will frame the particular neutralisations available to be drawn on in the market under study.

In a review of white-collar crime, Ruggiero notes that what he calls 'power crimes' are often characterised by 'invisibility', both in relation to the criminals and the victims:

> It has long been noted that invisibility describes the condition of both powerful criminals and their victims. The perpetrator is made invisible by the circumstance whereby the setting of the offence does not coincide with the setting where its effects will be felt. This is also the case because the time when the crime is performed and the time when the damage caused becomes apparent do not correspond. On the other hand, victims themselves can be described as invisible in that they are both absent from the scene of the crime and are frequently unaware of their own victimisation (Ruggiero 2007: 167).

Unlike many corporate or state crimes, where the initial act occurs (sometimes far) in advance of the harmful effect that is eventually felt in a far-flung location, the crime of illicit antiquities dealing occurs *after* the harm that has been caused in releasing the object from its context. The neutralising effect on the moral presentation of dealers' participation in the market is similar though. Dealers take much advantage of the moral distance that accompanies geographical distance from the sites where harm is located. They also use the timeline mentioned to argue against causality in the link between their acts of trade and the harms caused – the objects are out of the ground already so why not trade them? Indeed, given that these rare and fragile items are now at loose in the world, dealers tend to argue that it is a moral prerogative for them to collect and care for them; or at least to play a role in securing their transfer to a private collector or museum who will. The highly profitable nature of such transfers is not generally mentioned in this process of constructively moralising about the benefits of the trade. Another suggestion which tends to be dismissed by dealers is that the market nature of the movement of illicit antiquities refutes the alleged lack of cause-and-effect relationship between the market and its sources of supply. They focus on the fact that

by the time an object reaches them, the harm has already happened and cannot be undone, rather than seeing their act of purchase as encouraging future looting in a cyclical market-oriented manner. As I have shown at length elsewhere, the myth of the 'chance find' is always available to supplant a picture of looting with an image of accidental discovery during routine agricultural work, which removes the immoral origin of an object from the story of protection and preservation that is deployed in support of a transaction (Mackenzie 2005b, 2005a).

The sorts of justifications and rationalisations that present an apparently wrongful deed as a moral imperative bring the attitudes of many antiquities dealers and collectors within the ambit of what Ruggiero has classified as 'philanthropic power crimes'. Examples he gives are of arms smugglers who think they are supporting democratic revolution in civil war-torn countries, and human smugglers who see their role in terms of moving clients where they want to go, and in the process alleviating global problems such as unemployment and overpopulation (Ruggiero 2007).

Neutralisations are therefore available in the discourse prevalent among those who operate in many markets which are linked to criminality. These neutralisations are often in the form of narratives, or stories, which illustrate or contain rather than boldly state the particular neutralisation in question. The nuance of stories enables them to achieve greater emotional resonance with the 'user' and therefore to allow a central message to become ingrained which was possibly not entirely so plausible in its stripped-down form. So while it is highly unlikely that most unprovenanced antiquities on the international market are the result of chance finds as opposed to products of the large amount of clandestine digging which researchers have catalogued, the credibility of this position is bolstered not by resort to evidence but by the recounting of tales about imagined farmers doing an honest day's work and inadvertently ploughing up a cultural object, which then raises the spectre of an

incompetent and bureaucratic response from officials of the caricatured source state, requiring the commandeering of the hapless farmer's land for an unconscionable amount of time while the authorities sort out what to do about the possibility he is ploughing a heritage site.

Sykes and Matza (1957), and later Matza (Matza 1964, 1969), saw techniques of neutralisation as 'preceding deviant behaviour and making it possible' (Sykes and Matza 1957: 666), removing the 'moral bind to law' and enabling drift into deviance – the impression therefore is of an actor who is freed of the chains of social control and able to act deviantly, but who so acts *for reasons other than the neutralisations themselves*. In Matza's terms, they have the 'will' to perform the action (Matza 1964, 1969) and it is that will which is the ultimate driver of deviance, while neutralisations make possible the deviant action by taking the (social) brakes off, as it were. The nature of neutralisations in the discourse of the illicit market in cultural objects, however, is closer to etiology than this picture of 'neutralisations as the temporary removal of constraints' suggests. The market discourse presents itself as what Mills referred to as 'socially situated clusters of motive' (Mills 1940: 913), binding up motivation and neutralisation in stories that both rationalise, justify and excuse, while also engendering emotional reactions in users that support a disposition towards carrying out criminal trades. These trades are both legitimated and motivated through a focus on their normality in globalised neoliberal capitalist market regimes, to the detriment of a focus on the ethical content of what is in many cases effectively a high-cultural form of the contemporary plunder of the resources of developing nations – what in relation to natural resources in the development literature has been condemned as 'rip and ship'.

A relatively bounded transactional culture in which these stories are the building blocks of the foundational reality of being a dealer can help us to understand how trading in stolen cultural objects can fall into Ruggiero's category of philanthropic power crime –

constructed by market participants as taking place somewhere on a continuum from beneficial to justifiable to excusable, but constructed as criminal by external observers. The narratives of the market create a field of transactions where dealers exhibit a 'need not to know' (Harvey 2000: 232) about potentially incriminating object provenance, thus protecting their construction of events from contradictory evidence, and this is a manifestation of a culture which exists in advance of any specific illegal act to provide a context in which such acts are both possible and condoned.

Regulation as a dual emphasis on morality and rationality

For the purposes of thinking about the regulation of the antiquities market, the 'decentred' and 'essentialist' definition of regulation developed by Julia Black is both broad and specific enough to be helpful. Thus, regulation is conceived here as 'the sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing a broadly identified outcome or outcomes, which may involve mechanisms of standard-setting, information gathering and behaviour-modification' (Black 2002: 26). Such a definition acknowledges that regulation is to be found in many processes of social control, including normative and cultural influences, but in requiring that it involves intentional goal-oriented intervention on the part of the 'regulator' to qualify the process as 'regulation' rather than one of these other types of social influence, it resists the temptation to see regulation in such a broad field of activities as to render it a ubiquitous social force rather than a socio-legal technology.

From the difficulties of achieving effective deterrence in the application of criminal sanctions to white-collar criminals has developed the proposition that regulation should also focus on the 'moral dimension'. Thus, adherence only to the letter of the law rather than fulsome compliance with its spirit might be minimised (Haines 1997; McBarnet 2003). 'Persuasion', in the punish versus persuade dualism (Ayres and Braithwaite 1992), therefore

might productively involve attempts on the part of regulators to achieve some level of buy-in to their moral frameworks by those who are the subject of regulation.

Broadly speaking, advocates of different styles of regulation tend to base these on declared or undeclared assumptions about the moral status of the actors to be regulated. In some models, it has been said, business actors are seen as amoral calculators. Regulatory models proceeding on this assumption therefore tend to recommend rationalist interventions such as detection and deterrent strategies. As Thomas Hobbes observed, 'in contriving any system of government. . . every man ought to be supposed to be a knave and to have no other end, in all his actions, than his private interest'. In this approach, therefore, people are seen as complying with regulation only when they have calculated it is in their self-interest to do so (Grasmick and Bursik 1990; Scholz 1997; Simpson 2002; Shover and Hochstetler 2006).

In other models, business actors have been assumed to be generally moral actors, who would do good deeds if given the opportunity, but who are perhaps working in an organisational culture which has developed unlawful norms and routines. Theories based on these assumptions tend to involve recommendations for strategies which appeal to the fundamentally solid moral grounding of the actors involved, removing organisational or cultural barriers to their acting virtuously. Unlike the approaches mentioned above where people comply on the basis of cost-benefit calculations, actors are seen here to comply for normative, moral or other 'social' reasons which can not be reduced to analysis involving basic rationality (e.g. Tyler 1990; Etzioni 1961; Rees 1997; Gunningham et al. 2003).

The most widely supported regulatory strategies, such as Braithwaite's pyramidal approach, include regulatory mechanisms designed to have effects on both types of actors, and these effects are therefore either moral-psychological or rational-behavioural. So the virtuous actors in any field will comply because they agree with the values the regulator promotes, while the amoral calculators will comply because of the threat of detection and punishment.

Indeed responsive regulation theory suggests that the same person may have multiple reasons for complying – moral, social and rational – and this supports the spread of control strategies it employs (Ayres and Braithwaite 1992: p.30 et seq). One may, for example, feel a rational pull not to comply, but at the same time a normative motivation towards compliance, and which of these motivations ultimately wins out can be affected by regulatory influence.

Overall then, regulation calls attention to the difficult relationship between attitudes and behaviour. A recent 'test' of responsive regulation theory sets up the problem neatly (Nielsen and Parker 2009). In the study, while a 'tit for tat' rational deterrence strategy changed behavioural patterns to suit its incentives, it did little to alter underlying attitudes (with the implication that if an enforcement strategy ceases or does not function universally, the undesirable behaviour will continue). On the other hand, a 'restorative justice' approach seemed in the test to change attitudes but not behaviour, which while useful is not a particularly inspiring result for applied criminology. The key to changing attitudes and behaviour would seem to lie in a combination of these measures, and while this is a technical and far from straightforward matter the pyramidal approach to regulation at least provides a framework for this sort of development (Chappell and Polk 2009).

Effective regulation for the market in cultural objects: the 'missing middle'

For fields with a wide range of diverse actors, a suitably wide range of regulatory strategies would seem to hold the best promise of effective market steering (Chappell and Polk 2009). The market in cultural objects, nationally and internationally, is notable for lacking such a range. An analysis of the regulation of the market suggests that there is a 'missing middle' to the regulatory structure here. The regulation tends to take the form of, at the top of the pyramid, criminal sanctions for looters and dealers, which is a relatively high-level (if in this case ineffective) sanction on a pyramidal approach, and at the bottom of the pyramid, various self-regulatory initiatives such as dealers' codes of ethics and museum

acquisition statements (e.g. ICOM 2006; UNESCO 1999). What is missing, therefore, is the mid-range sanctions and incentives of the pyramid. Administrative sanctions, for example, would be valuable in relation to steering the activities of dealers.

Systems of licensing specific to antiquities dealers, which are currently largely absent from the antiquities scene worldwide, might be crafted in ways that allow for greater public or official transparency in stock held and dealing activity, and would also of course imply a sanction of licence revocation which would deny the dealer the right to do business in the jurisdiction in question and would therefore operate as quite a severe sanction. Currently anyone can set themselves up as an antiquities dealer, making it effectively an 'old boys club' characterised by family heritage, networks which rely on trust and the notion of fair play, and in places by fraudsters and criminals who establish themselves as players on the scene and exploit the old-world values of the largely unregulated system with ease. Researchers tend only to find out about examples of the latter group when they are caught – such as was the case for Jonathan Tokeley Parry or Giovanni Medici (Watson and Todeschini 2006) – and the number of such operators is probably a considerably higher 'dark figure' than such known cases would suggest. Licensing systems can, depending on design, bring regulatory implications that run through many of the mid-levels of the pyramid, from routine oversight and the usual regulatory letter-writing (asking for explanations or desistance) at the bottom, suspension in the middle, and revocation nearer the top.

Provisions which allow the imposition of significant fines and/or seizure of an object where a dealer is found to have bought without having exercised due diligence would mitigate the difficulties in achieving the high standard of criminal proof required to convict in terms of current criminal statutes (Gerstenblith 2007). Such seizures are currently possible, but other than through diplomatic negotiation or certain administrative 'lucky strikes' such as where a misdescription is noted at customs, the usual mechanism is vastly expensive

international civil litigation in which a source country claims ownership and must overcome both the burden of proof in relation to the fact of ownership (Kaye and Main 1995), and any applicable limitation of actions rules which may have vested title in the current possessor even where the object can be proven to have been stolen (Redmond-Cooper 2000; Kenyon and Mackenzie 2002). Rather than the development of more nimble and workable modes of seizure which might constitute effective mid-range pyramidal interventions, the most notable example we have seen of an acknowledgement of the difficulty of proof in relation to prosecutions for dealing in this type of stolen property is the UK's response to the UN Iraq Sanctions Order, which reversed the burden of proof in relation to objects of Iraqi origin. Instead of steering the market, the effect of this seems to have been to kill the London market in Iraqi antiquities altogether, at least among the public and so-called 'legitimate' dealers (Brodie 2008). In this case that may not have been such a bad result, but a more subtle approach to transforming the practices of the open antiquities trade would seem appropriate in the general case of antiquities dealing. Money laundering and proceeds of crime legislation may prove particularly valuable here (Chappell and Polk 2009), especially where UNTOC provides the basis for inter-jurisdictional collaboration and support.

There are in fact many regulatory suggestions which stem from the field of corporate crime studies that could be usefully applied to the antiquities market, and I do not want to explore them in an exhaustive way here as much as I want to outline the good reasons for drawing the debate on the regulation of antiquities dealers closer to that already rich field of policy-oriented research and considering in general principle the need to fill out the 'missing middle' of the pyramid of antiquities regulation. By way of illustration, however, and in addition to the licensing and fine/seizure examples briefly discussed above, we can note that relatively new ideas such as 'corporate probation', for example, might be transferable to the antiquities dealing community and would be one way to justify increased supervision of and

reporting requirements from dealers who had been found to have a violation. This could be linked to the licensing requirements mentioned above. Community service orders or some equivalent could be used to require illicit dealers to 'pay something back' to the community. This would raise interesting questions of 'which community', given that source countries draw attention to the harm they feel they suffer when heritage is looted, but it would certainly help to reinforce the idea that dealing in looted antiquities is not a victimless crime, and that depletion of the archaeological record is a form of social harm that adversely affects a common social interest in knowing about the past. The list goes on: Chappell and Polk have recently provided an outline of many sensible suggestions based in the pyramidal regulation approach and there is no need to duplicate them here (Chappell and Polk 2009).

Crystallising risk

In his review of the recent financial crisis, Braithwaite identifies a culture of 'risk-shifting' among the bankers and traders who profited from selling credit default swaps which included what we now know to be packages of 'toxic debt'. He contrasts this culture of risk-shifting to the ideal of 'risk-managing' which would have led to better outcomes: 'New York and London created capitalism's badlands by promoting the idea that risks were things smart people shifted rather than controlled and accepted' (Braithwaite 2009: 440). We can observe a similar culture of risk-shifting in the antiquities trade, where artefacts with no – or dubious – provenance are bought and sold in a 'pass the parcel' fashion, producing a highly profitable transaction chain which participants enjoy so long as the music does not stop. There is little attempt in the antiquities trade to manage this type of risk. The closest point to this type of management would be where a dealer considers the risk of a purchase to be too great, and declines to buy. Dealers will normally take no other action in relation to such an offer, such as reporting it to the police, rendering their practice a form of self-insulation against risk

rather than contributing to an overall system of market management of objects that are clearly suspect.

In some ways, this culture of risk-shifting in the antiquities market can be understood in similar terms to the risk-shifting of the City that Braithwaite identifies. This is a market populated predominantly by sole traders who are set up in competition with each other, and are not used to regulatory oversight of any real intensity. Looking out for oneself is the primary rule in such market settings, the overall market being something that dealers see themselves as exploiting rather than identifying with as their responsibility. The market is on this view a context for their actions rather than constituted by them, and the temptation to take a profitable risk-shifting approach rather than a costly and time-consuming risk-managing one is great. How might we think about 'crystallising' the risk considerations in any given transaction, or making them more real in the minds of the dealers, so as to prompt more of a risk-management approach?

Lacey observes that '(in Britain) the overwhelming majority of suspected offences investigated by the police come to their notice through report by members of the public'. Therefore, 'a primary gatekeeper between social behaviour which might be defined as criminal and the process of formal criminalization is the ordinary citizen' (Lacey 2004: 149). This truism presents immediate problems for the regulation of the antiquities market, where the ordinary citizen is significantly unlikely to come into possession of the facts necessary to prompt a report to the police. The trading routines of the market present little opportunity for the private citizen to appraise herself of wrongdoing, other than if she is a buyer and therefore an active participant in those trading routines. The main potential 'capable guardians' (Felson 1995) in this market are the buyers and sellers themselves, and this is problematic insofar as these market participants may have less incentive than the ordinary citizen (often a victim) to report wrongdoing. Of course there are opportunities for the police to exercise surveillance at

some points – notably reviewing the catalogues of public auctions – but much of the market is private or semi-private, to the extent that even where dealers operate shops, in most jurisdictions the police would require some 'reasonable suspicion' or 'just cause' to legitimate any useful or thorough inspection of the provenance of stock held. What is required is smart regulation that through the combination of rational (i.e. deterrent or punishment oriented) and normative (i.e. moral, or socio-cultural) regulatory logics makes market participants into market guardians.

This would be challenging, but there are obvious ways to approach it. Given the enduring global financial crisis it is perhaps not the best time to be looking at systems of financial regulation for models of good practice in this regard, but generally we can observe that the sort of 'regulator' which has over the last decades become an established part of market-driven sectors such as finance, is absent from markets in cultural objects. These are regulatory bodies which oversee, inspect, make information demands of, steer, cajole, sometimes threaten, and otherwise take an active part in controlling the businesses in their regulatory space (Braithwaite 2008). They are comprised of experts in the field in question, given legal duties and powers to exercise market governance functions, and are intended to be 'closer' to the markets they control than the police, who have proven to be too inexpert and far removed from white-collar settings to exercise any useful level of preventive control over illicit or criminal activity at such high levels. This regulatory principle is absent in relation to the steering of the trade in cultural objects and we face precisely this problem of under-policing which has so vexed observers of crimes 'in the suites' since Sutherland.

Conclusion

Analysing illicit antiquity trades at the high end of the market as crimes of the powerful allows us to make certain key advances in our conceptual engagement with the question of how to control the trade. An approach to control based in the literature of crimes

of the powerful is probably most useful here when held alongside the analytical lens presented by the idea of transnational crime – so in this instance the suggestion is that these are useful partner frameworks, perhaps both representing different aspects of the 'third phase' of thinking about the illicit market in cultural property. Certainly they offer new insights in their departure from the first phase of archaeological and other awareness-raising writings, which alerted the world to the issues at stake, but could not be expected to consider the complexities of systems of control. They also offer progression from the second phase, of legal writings, which rendered important instruments but suffered – and continue to suffer – from the problem of, as Braithwaite puts it in a different context, being constructed by 'lawyers who have a hammer (reform the law) and see a lot of nails' (Braithwaite 2009: 441). The conceptual frame of crimes of the powerful brings the study of illicit antiquities dealing into line with the significant literature that has developed around high-end white-collar, corporate, and more recently state crimes, and enables us to place many observations that have been made about the market – in respect of power, secrecy, invisibility, political participation, ethics, culture, discourse and neutralisation, and more – in a theoretical model that not only helps to structure these findings, but sets up a discussion about effective regulation which can draw on current thinking that is more sophisticated than calls for 'more law'.

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